HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1203 OF 2005.

Shri V. Prabhakar Rao. ...Petitioner

V/s.

Utopian Exports Ltd. & Anr. ...Respondents.

Shri M.S.Mohite & S.V.Kotwal,for petitioner

Shri H.S.Shreepad Murthy,for respondent no.1.

Shri V.B.Konde-Deshmukh, APP for Respondent-State.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 26, 2005

P.C. :-

1. Heard counsel for the parties.

2. Rule, made returnable forthwith, by consent.

3. Shri.H.S.Shreepad Murthy, the counsel waives notice for respondent No.1 and Shri V.B.Konde-Deshmukh, the learned APP waives notice for Respondent No.2-State.

4. As short question is involved, the petition is taken up for final disposal, forthwith, by consent.

5. This petition takes exception to the order passed by the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai dated April 13, 2005 in C.C.No. 1291/S/2003 on the application filed by the accused No.1,2 4 and 5 that they may be allowed to complete the cross-examination of the complainant and to lead evidence as per provision of Cr.P.Code.

6. The controversy before the trial court was that the complainant-Respondent No.1 asserted that the liability under the cheque in question has been accepted, determined and finalised under the Arbitration Award dated 9th January, 2004. To refute this assertion, the Petitioner intended to cross-examine the complainant, which was not permitted by the trial court. In this background, formal application was moved by the Accused which has been disposed of by the impugned order. The trial court has observed that the amount in the cheque is also included in the said award. It is then observed that the amount in the cheque is proved to be legally enforceable debt. Whereas the defence of the accused is that the cheque has been misused. On that reasoning, the lower court then proceeded to observe that, the amount in the cheque is included in whole arbitration amount as

payable to the complainant as decided by the arbitration. The Lower Court then opined that the accused cannot avail of any other defence, other than to examine the complainant on the point of misuse of cheque.

7. The lower court in my view, has glossed over the grievance of the Accused that they were entitled not only to cross-examine the complainant on the point of misuse of the cheque in question but also to refute the assertion of the complainant that the liability under the cheque in question is accepted, determined and finalised under the Arbitration Award. In other words, the accused will be entitled to cross-examine the complainant both, on the point of misuse of the cheque as also on the factum that the liability under the cheque in question is not accepted, determined and finalised under the Arbitration Award. That opportunity will have to be given to the accused as Arbitration Award has been produced and exhibited at the instance of complainant and it is on that basis the complainant asserts that the liability under cheque in question is accepted, determined and finalised thereunder.

8. With this limited clarification, the impugned

order is modified and the application preferred by the applicant accused is disposed of accordingly.

9. The trial court to proceed with the trial expeditiously as per the earlier direction of this court.